

**Introduced by Senator Pan**

February 25, 2015

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An act to amend Section 1370 of the Penal Code, relating to prisons.

LEGISLATIVE COUNSEL'S DIGEST

SB 453, as introduced, Pan. Prisons: involuntary medication.

Existing law provides that if a defendant in a criminal proceeding is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent. Existing law provides that the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, as directed by the State Department of State Hospitals, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified. Existing law further specifies commitment proceedings to include circumstances for the voluntary and involuntary administration of antipsychotic medication.

Under existing law, if consent for antipsychotic medication is withdrawn or if the treating psychiatrist later determines that antipsychotic medication is medically necessary and appropriate, the treating psychiatrist is required to make efforts to obtain consent for that medication. Existing law provides that if the treating psychiatrist certifies that antipsychotic medication has become medically necessary and appropriate for the defendant, antipsychotic medication may be administered to the defendant for a maximum of 21 days, provided, however, that, within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law

judge to be conducted at the facility where the defendant is receiving treatment.

This bill would instead authorize a psychiatrist designated by the facility medical director to make the determination and certification as to whether antipsychotic medication is medically necessary and appropriate and to administer that medication to the defendant for up to 21 days.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1370 of the Penal Code is amended to  
2 read:

3 1370. (a) (1) (A) If the defendant is found mentally  
4 competent, the criminal process shall resume, the trial on the  
5 offense charged or hearing on the alleged violation shall proceed,  
6 and judgment may be pronounced.

7 (B) If the defendant is found mentally incompetent, the trial,  
8 the hearing on the alleged violation, or the judgment shall be  
9 suspended until the person becomes mentally competent.

10 (i) In the meantime, the court shall order that the mentally  
11 incompetent defendant be delivered by the sheriff to a state hospital  
12 for the care and treatment of the mentally disordered, as directed  
13 by the State Department of State Hospitals, or to any other available  
14 public or private treatment facility, including a local county jail  
15 treatment facility or the community-based residential treatment  
16 system established pursuant to Article 1 (commencing with Section  
17 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and  
18 Institutions Code if the facility has a secured perimeter or a locked  
19 and controlled treatment facility, approved by the community  
20 program director that will promote the defendant's speedy  
21 restoration to mental competence, or placed on outpatient status  
22 as specified in Section 1600.

23 (ii) However, if the action against the defendant who has been  
24 found mentally incompetent is on a complaint charging a felony  
25 offense specified in Section 290, the prosecutor shall determine  
26 whether the defendant previously has been found mentally  
27 incompetent to stand trial pursuant to this chapter on a charge of  
28 a Section 290 offense, or whether the defendant is currently the

1 subject of a pending Section 1368 proceeding arising out of a  
2 charge of a Section 290 offense. If either determination is made,  
3 the prosecutor shall so notify the court and defendant in writing.  
4 After this notification, and opportunity for hearing, the court shall  
5 order that the defendant be delivered by the sheriff to a state  
6 hospital, as directed by the State Department of State Hospitals,  
7 or other secure treatment facility for the care and treatment of the  
8 mentally disordered unless the court makes specific findings on  
9 the record that an alternative placement would provide more  
10 appropriate treatment for the defendant and would not pose a  
11 danger to the health and safety of others.

12 (iii) If the action against the defendant who has been found  
13 mentally incompetent is on a complaint charging a felony offense  
14 specified in Section 290 and the defendant has been denied bail  
15 pursuant to subdivision (b) of Section 12 of Article I of the  
16 California Constitution because the court has found, based upon  
17 clear and convincing evidence, a substantial likelihood that the  
18 person's release would result in great bodily harm to others, the  
19 court shall order that the defendant be delivered by the sheriff to  
20 a state hospital for the care and treatment of the mentally  
21 disordered, as directed by the State Department of State Hospitals,  
22 unless the court makes specific findings on the record that an  
23 alternative placement would provide more appropriate treatment  
24 for the defendant and would not pose a danger to the health and  
25 safety of others.

26 (iv) The clerk of the court shall notify the Department of Justice  
27 in writing of ~~any~~ a finding of mental incompetence with respect  
28 to a defendant who is subject to clause (ii) or (iii) for inclusion in  
29 his or her state summary criminal history information.

30 (C) Upon the filing of a certificate of restoration to competence,  
31 the court shall order that the defendant be returned to court in  
32 accordance with Section 1372. The court shall transmit a copy of  
33 its order to the community program director or a designee.

34 (D) A defendant charged with a violent felony may not be  
35 delivered to a state hospital or treatment facility pursuant to this  
36 subdivision unless the state hospital or treatment facility has a  
37 secured perimeter or a locked and controlled treatment facility,  
38 and the judge determines that the public safety will be protected.

39 (E) For purposes of this paragraph, "violent felony" means an  
40 offense specified in subdivision (c) of Section 667.5.

(F) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1600, only if the court finds that the placement will not pose a danger to the health or safety of others. If the court places a defendant charged with a violent felony on outpatient status, as specified in Section 1600, the court shall serve copies of the placement order on defense counsel, the sheriff in the county where the defendant will be placed, and the district attorney for the county in which the violent felony charges are pending against the defendant.

(2) Prior to making the order directing that the defendant be committed to the State Department of State Hospitals or other treatment facility or placed on outpatient status, the court shall proceed as follows:

(A) The court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or be committed to the State Department of State Hospitals or to any other treatment facility. A person shall not be admitted to a state hospital or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee. The community program director or designee shall evaluate the appropriate placement for the defendant between the State Department of State Hospitals, a local county jail treatment facility, or the community-based residential treatment system based upon guidelines provided by the State Department of State Hospitals. If a local county jail treatment facility is selected, the State Department of State Hospitals shall provide treatment at the county jail treatment facility and reimburse the county jail treatment facility for the reasonable costs of the bed during the treatment. If the community-based residential treatment system is selected, the State Department of State Hospitals shall provide reimbursement to the community-based residential treatment system for the cost of treatment as negotiated with the State Department of State Hospitals. The six-month limitation in Section 1369.1 shall not apply to individuals deemed incompetent to stand trial who are being treated to restore competency within a county jail treatment facility pursuant to this section.

1 (B) The court shall hear and determine whether the defendant  
2 lacks capacity to make decisions regarding the administration of  
3 antipsychotic medication. The court shall consider opinions in the  
4 reports prepared pursuant to subdivision (a) of Section 1369, as  
5 applicable to the issue of whether the defendant lacks capacity to  
6 make decisions regarding the administration of antipsychotic  
7 medication, and shall proceed as follows:

8 (i) The court shall hear and determine whether any of the  
9 following is true:

10 (I) The defendant lacks capacity to make decisions regarding  
11 antipsychotic medication, the defendant's mental disorder requires  
12 medical treatment with antipsychotic medication, and, if the  
13 defendant's mental disorder is not treated with antipsychotic  
14 medication, it is probable that serious harm to the physical or  
15 mental health of the patient will result. Probability of serious harm  
16 to the physical or mental health of the defendant requires evidence  
17 that the defendant is presently suffering adverse effects to his or  
18 her physical or mental health, or the defendant has previously  
19 suffered these effects as a result of a mental disorder and his or  
20 her condition is substantially deteriorating. The fact that a  
21 defendant has a diagnosis of a mental disorder does not alone  
22 establish probability of serious harm to the physical or mental  
23 health of the defendant.

24 (II) The defendant is a danger to others, in that the defendant  
25 has inflicted, attempted to inflict, or made a serious threat of  
26 inflicting substantial physical harm on another while in custody,  
27 or the defendant had inflicted, attempted to inflict, or made a  
28 serious threat of inflicting substantial physical harm on another  
29 that resulted in his or her being taken into custody, and the  
30 defendant presents, as a result of mental disorder or mental defect,  
31 a demonstrated danger of inflicting substantial physical harm on  
32 others. Demonstrated danger may be based on an assessment of  
33 the defendant's present mental condition, including a consideration  
34 of past behavior of the defendant within six years prior to the time  
35 the defendant last attempted to inflict, inflicted, or threatened to  
36 inflict substantial physical harm on another, and other relevant  
37 evidence.

38 (III) The people have charged the defendant with a serious crime  
39 against the person or property, involuntary administration of  
40 antipsychotic medication is substantially likely to render the

1 defendant competent to stand trial, the medication is unlikely to  
2 have side effects that interfere with the defendant's ability to  
3 understand the nature of the criminal proceedings or to assist  
4 counsel in the conduct of a defense in a reasonable manner, less  
5 intrusive treatments are unlikely to have substantially the same  
6 results, and antipsychotic medication is in the patient's best medical  
7 interest in light of his or her medical condition.

8 (ii) If the court finds any of the conditions described in clause  
9 (i) to be true, the court shall issue an order authorizing involuntary  
10 administration of antipsychotic medication to the defendant when  
11 and as prescribed by the defendant's treating psychiatrist at any  
12 facility housing the defendant for purposes of this chapter. The  
13 order shall be valid for no more than one year, pursuant to  
14 subparagraph (A) of paragraph (7). The court shall not order  
15 involuntary administration of psychotropic medication under  
16 subclause (III) of clause (i) unless the court has first found that the  
17 defendant does not meet the criteria for involuntary administration  
18 of psychotropic medication under subclause (I) of clause (i) and  
19 does not meet the criteria under subclause (II) of clause (i).

20 (iii) In all cases, the treating hospital, facility, or program may  
21 administer medically appropriate antipsychotic medication  
22 prescribed by a psychiatrist in an emergency as described in  
23 subdivision (m) of Section 5008 of the Welfare and Institutions  
24 Code.

25 (iv) If the court has determined that the defendant has the  
26 capacity to make decisions regarding antipsychotic medication,  
27 and if the defendant, with advice of his or her counsel, consents,  
28 the court order of commitment shall include confirmation that  
29 antipsychotic medication may be given to the defendant as  
30 prescribed by a treating psychiatrist pursuant to the defendant's  
31 consent. The commitment order shall also indicate that, if the  
32 defendant withdraws consent for antipsychotic medication, after  
33 the treating psychiatrist complies with the provisions of  
34 subparagraph (C), the defendant shall be returned to court for a  
35 hearing in accordance with subparagraphs (C) and (D) regarding  
36 whether antipsychotic medication shall be administered  
37 involuntarily.

38 (v) If the court has determined that the defendant has the  
39 capacity to make decisions regarding antipsychotic medication  
40 and if the defendant, with advice from his or her counsel, does not

1 consent, the court order for commitment shall indicate that, after  
2 the treating psychiatrist complies with the provisions of  
3 subparagraph (C), the defendant shall be returned to court for a  
4 hearing in accordance with subparagraphs (C) and (D) regarding  
5 whether antipsychotic medication shall be administered  
6 involuntarily.

7 (vi) ~~Any~~A report made pursuant to paragraph (1) of subdivision  
8 (b) shall include a description of ~~any~~ antipsychotic medication  
9 administered to the defendant and its effects and side effects,  
10 including effects on the defendant's appearance or behavior that  
11 would affect the defendant's ability to understand the nature of  
12 the criminal proceedings or to assist counsel in the conduct of a  
13 defense in a reasonable manner. During the time the defendant is  
14 confined in a state hospital or other treatment facility or placed on  
15 outpatient status, either the defendant or the people may request  
16 that the court review any order made pursuant to this subdivision.  
17 The defendant, to the same extent enjoyed by other patients in the  
18 state hospital or other treatment facility, shall have the right to  
19 contact the patients' rights advocate regarding his or her rights  
20 under this section.

21 (C) If the defendant consented to antipsychotic medication as  
22 described in clause (iv) of subparagraph (B), but subsequently  
23 withdraws his or her consent, or, if involuntary antipsychotic  
24 medication was not ordered pursuant to clause (v) of subparagraph  
25 (B), and ~~the treating psychiatrist~~ *a psychiatrist designated by the*  
26 *facility's medical director* determines that antipsychotic medication  
27 has become medically necessary and appropriate, ~~the treating~~  
28 *psychiatrist designated by the facility's medical director* shall make  
29 efforts to obtain informed consent from the defendant for  
30 antipsychotic medication. If informed consent is not obtained from  
31 the defendant, and ~~the treating~~ *psychiatrist designated by the*  
32 *facility's medical director* is of the opinion that the defendant lacks  
33 capacity to make decisions regarding antipsychotic medication  
34 based on the conditions described in subclause (I) or (II) of clause  
35 (i) of subparagraph (B), ~~the treating~~ *psychiatrist designated by the*  
36 *facility's medical director* shall certify whether the lack of capacity  
37 and any applicable conditions described above exist. That  
38 certification shall contain an assessment of the current mental  
39 status of the defendant and the opinion of ~~the treating~~ *psychiatrist*  
40 *designated by the facility's medical director* that involuntary

1 antipsychotic medication has become medically necessary and  
2 appropriate.

3 (D) (i) If the ~~treating~~ psychiatrist *designated by the facility's*  
4 *medical director* certifies that antipsychotic medication has become  
5 medically necessary and appropriate pursuant to subparagraph (C),  
6 antipsychotic medication may be administered to the defendant  
7 for not more than 21 days, provided, however, that, within 72 hours  
8 of the certification, the defendant is provided a medication review  
9 hearing before an administrative law judge to be conducted at the  
10 facility where the defendant is receiving treatment. The ~~treating~~  
11 psychiatrist *designated by the facility's medical director* shall  
12 present the case for the certification for involuntary treatment and  
13 the defendant shall be represented by an attorney or a patients'  
14 rights advocate. The attorney or patients' rights advocate shall be  
15 appointed to meet with the defendant no later than one day prior  
16 to the medication review hearing to review the defendant's rights  
17 at the medication review hearing, discuss the process, answer  
18 questions or concerns regarding involuntary medication or the  
19 hearing, assist the defendant in preparing for the hearing and  
20 advocating for his or her interests at the hearing, review the panel's  
21 final determination following the hearing, advise the defendant of  
22 his or her right to judicial review of the panel's decision, and  
23 provide the defendant with referral information for legal advice  
24 on the subject. The defendant shall also have the following rights  
25 with respect to the medication review hearing:

26 (I) To be given timely access to the defendant's records.

27 (II) To be present at the hearing, unless the defendant waives  
28 that right.

29 (III) To present evidence at the hearing.

30 (IV) To question persons presenting evidence supporting  
31 involuntary medication.

32 (V) To make reasonable requests for attendance of witnesses  
33 on the defendant's behalf.

34 (VI) To a hearing conducted in an impartial and informal  
35 manner.

36 (ii) If the administrative law judge determines that the defendant  
37 either meets the criteria specified in subclause (I) of clause (i) of  
38 subparagraph (B), or meets the criteria specified in subclause (II)  
39 of clause (i) of subparagraph (B), then antipsychotic medication  
40 may continue to be administered to the defendant for the 21-day



1 certification period. Concurrently with the treating psychiatrist's  
2 certification, the treating psychiatrist shall file a copy of the  
3 certification and a petition with the court for issuance of an order  
4 to administer antipsychotic medication beyond the 21-day  
5 certification period. For purposes of this subparagraph, the treating  
6 psychiatrist shall not be required to pay or deposit any fee for the  
7 filing of the petition or other document or paper related to the  
8 petition.

9 (iii) If the administrative law judge disagrees with the  
10 certification, medication may not be administered involuntarily  
11 until the court determines that antipsychotic medication should be  
12 administered pursuant to this section.

13 (iv) The court shall provide notice to the prosecuting attorney  
14 and to the attorney representing the defendant, and shall hold a  
15 hearing, no later than 18 days from the date of the certification, to  
16 determine whether antipsychotic medication should be ordered  
17 beyond the certification period.

18 (v) If, as a result of the hearing, the court determines that  
19 antipsychotic medication should be administered beyond the  
20 certification period, the court shall issue an order authorizing the  
21 administration of that medication.

22 (vi) The court shall render its decision on the petition and issue  
23 its order no later than three calendar days after the hearing and, in  
24 any event, no later than the expiration of the 21-day certification  
25 period.

26 (vii) If the administrative law judge upholds the certification  
27 pursuant to clause (ii), the court may, for a period not to exceed  
28 14 days, extend the certification and continue the hearing pursuant  
29 to stipulation between the parties or upon a finding of good cause.  
30 In determining good cause, the court may review the petition filed  
31 with the court, the administrative law judge's order, and any  
32 additional testimony needed by the court to determine if it is  
33 appropriate to continue medication beyond the 21-day certification  
34 and for a period of up to 14 days.

35 (viii) The district attorney, county counsel, or representative of  
36 ~~any~~ a facility where a defendant found incompetent to stand trial  
37 is committed may petition the court for an order to administer  
38 involuntary medication pursuant to the criteria set forth in  
39 subclauses (II) and (III) of clause (i) of subparagraph (B). The  
40 order is reviewable as provided in paragraph (7).

1 (3) When the court orders that the defendant be committed to  
2 the State Department of State Hospitals or other public or private  
3 treatment facility, the court shall provide copies of the following  
4 documents prior to the admission of the defendant to the State  
5 Department of State Hospitals or other treatment facility where  
6 the defendant is to be committed:

7 (A) The commitment order, including a specification of the  
8 charges.

9 (B) A computation or statement setting forth the maximum term  
10 of commitment in accordance with subdivision (c).

11 (C) A computation or statement setting forth the amount of  
12 credit for time served, if any, to be deducted from the maximum  
13 term of commitment.

14 (D) State summary criminal history information.

15 (E) ~~Any arrest~~ *Arrest* reports prepared by the police department  
16 or other law enforcement agency.

17 (F) ~~Any court-ordered~~ *Court-ordered* psychiatric examination  
18 or evaluation reports.

19 (G) The community program director's placement  
20 recommendation report.

21 (H) Records of ~~any~~ *a* finding of mental incompetence pursuant  
22 to this chapter arising out of a complaint charging a felony offense  
23 specified in Section 290 or ~~any~~ *a* pending Section 1368 proceeding  
24 arising out of a charge of a Section 290 offense.

25 (I) ~~Any medical~~ *Medical* records.

26 (4) When the defendant is committed to a treatment facility  
27 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the  
28 court makes the findings specified in clause (ii) or (iii) of  
29 subparagraph (B) of paragraph (1) to assign the defendant to a  
30 treatment facility other than a state hospital or other secure  
31 treatment facility, the court shall order that notice be given to the  
32 appropriate law enforcement agency or agencies having local  
33 jurisdiction at the site of the placement facility of any finding of  
34 mental incompetence pursuant to this chapter arising out of a  
35 charge of a Section 290 offense.

36 (5) When directing that the defendant be confined in a state  
37 hospital pursuant to this subdivision, the court shall commit the  
38 patient to the State Department of State Hospitals.

39 (6) (A) If the defendant is committed or transferred to the State  
40 Department of State Hospitals pursuant to this section, the court

may, upon receiving the written recommendation of the medical director of the state hospital and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, transfer the defendant to the State Department of State Hospitals or to another public or private treatment facility approved by the community program director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). If either the defendant or the prosecutor chooses to contest either kind of order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.

(B) If the defendant is initially committed to the State Department of State Hospitals or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to each subsequent facility to which the defendant is transferred. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(7) (A) An order by the court authorizing involuntary medication of the defendant shall be valid for no more than one year. The court shall review the order at the time of the review of the initial report and the six-month progress reports pursuant to

1 paragraph (1) of subdivision (b) to determine if the grounds for  
2 the authorization remain. In the review, the court shall consider  
3 the reports of the treating psychiatrist or psychiatrists and the  
4 defendant's patients' rights advocate or attorney. The court may  
5 require testimony from the ~~treating~~ psychiatrist or  
6 psychiatrists *designated by the facility's medical director* and the  
7 patients' rights advocate or attorney, if necessary. The court may  
8 continue the order authorizing involuntary medication for up to  
9 another six months, or vacate the order, or make any other  
10 appropriate order.

11 (B) Within 60 days before the expiration of the one-year  
12 involuntary medication order, the district attorney, county counsel,  
13 or representative of any facility where a defendant found  
14 incompetent to stand trial is committed may petition the committing  
15 court for a renewal, subject to the same conditions and  
16 requirements as in subparagraph (A). The petition shall include  
17 the basis for involuntary medication set forth in clause (i) of  
18 subparagraph (B) of paragraph (2). Notice of the petition shall be  
19 provided to the defendant, the defendant's attorney, and the district  
20 attorney. The court shall hear and determine whether the defendant  
21 continues to meet the criteria set forth in clause (i) of subparagraph  
22 (B) of paragraph (2). The hearing on any petition to renew an order  
23 for involuntary medication shall be conducted prior to the  
24 expiration of the current order.

25 (b) (1) Within 90 days of a commitment made pursuant to  
26 subdivision (a), the medical director of the state hospital or other  
27 treatment facility to which the defendant is confined shall make a  
28 written report to the court and the community program director  
29 for the county or region of commitment, or a designee, concerning  
30 the defendant's progress toward recovery of mental competence  
31 and whether the administration of antipsychotic medication remains  
32 necessary. If the defendant is on outpatient status, the outpatient  
33 treatment staff shall make a written report to the community  
34 program director concerning the defendant's progress toward  
35 recovery of mental competence. Within 90 days of placement on  
36 outpatient status, the community program director shall report to  
37 the court on this matter. If the defendant has not recovered mental  
38 competence, but the report discloses a substantial likelihood that  
39 the defendant will regain mental competence in the foreseeable  
40 future, the defendant shall remain in the state hospital or other

1 treatment facility or on outpatient status. Thereafter, at six-month  
2 intervals or until the defendant becomes mentally competent, if  
3 the defendant is confined in a treatment facility, the medical  
4 director of the hospital or person in charge of the facility shall  
5 report in writing to the court and the community program director  
6 or a designee regarding the defendant's progress toward recovery  
7 of mental competence and whether the administration of  
8 antipsychotic medication remains necessary. If the defendant is  
9 on outpatient status, after the initial 90-day report, the outpatient  
10 treatment staff shall report to the community program director on  
11 the defendant's progress toward recovery, and the community  
12 program director shall report to the court on this matter at  
13 six-month intervals. A copy of these reports shall be provided to  
14 the prosecutor and defense counsel by the court.

15 (A) If the report indicates that there is no substantial likelihood  
16 that the defendant will regain mental competence in the foreseeable  
17 future, the committing court shall order the defendant to be returned  
18 to the court for proceedings pursuant to paragraph (2) of  
19 subdivision (c) no later than 10 days following receipt of the report.  
20 The court shall transmit a copy of its order to the community  
21 program director or a designee.

22 (B) If the report indicates that there is no substantial likelihood  
23 that the defendant will regain mental competence in the foreseeable  
24 future, the medical director of the state hospital or other treatment  
25 facility to which the defendant is confined shall do both of the  
26 following:

27 (i) Promptly notify and provide a copy of the report to the  
28 defense counsel and the district attorney.

29 (ii) Provide a separate notification, in compliance with  
30 applicable privacy laws, to the committing county's sheriff that  
31 transportation will be needed for the patient.

32 (2) If the court has issued an order authorizing the treating  
33 facility to involuntarily administer antipsychotic medication to the  
34 defendant, the reports made pursuant to paragraph (1) concerning  
35 the defendant's progress toward regaining competency shall also  
36 consider the issue of involuntary medication. Each report shall  
37 include, but is not limited to, all the following:

38 (A) Whether or not the defendant has the capacity to make  
39 decisions concerning antipsychotic medication.

1 (B) If the defendant lacks capacity to make decisions concerning  
2 antipsychotic medication, whether the defendant risks serious harm  
3 to his or her physical or mental health if not treated with  
4 antipsychotic medication.

5 (C) Whether or not the defendant presents a danger to others if  
6 he or she is not treated with antipsychotic medication.

7 (D) Whether the defendant has a mental illness for which  
8 medications are the only effective treatment.

9 (E) Whether there are any side effects from the medication  
10 currently being experienced by the defendant that would interfere  
11 with the defendant's ability to collaborate with counsel.

12 (F) Whether there are any effective alternatives to medication.

13 (G) How quickly the medication is likely to bring the defendant  
14 to competency.

15 (H) Whether the treatment plan includes methods other than  
16 medication to restore the defendant to competency.

17 (I) A statement, if applicable, that no medication is likely to  
18 restore the defendant to competency.

19 (3) After reviewing the reports, the court shall determine whether  
20 or not grounds for the order authorizing involuntary administration  
21 of antipsychotic medication still exist and shall do one of the  
22 following:

23 (A) If the original grounds for involuntary medication still exist,  
24 the order authorizing the treating facility to involuntarily administer  
25 antipsychotic medication to the defendant shall remain in effect.

26 (B) If the original grounds for involuntary medication no longer  
27 exist, and there is no other basis for involuntary administration of  
28 antipsychotic medication, the order for the involuntary  
29 administration of antipsychotic medication shall be vacated.

30 (C) If the original grounds for involuntary medication no longer  
31 exist, and the report states that there is another basis for involuntary  
32 administration of antipsychotic medication, the court shall set a  
33 hearing within 21 days to determine whether the order for the  
34 involuntary administration of antipsychotic medication shall be  
35 vacated or whether a new order for the involuntary administration  
36 of antipsychotic medication shall be issued. The hearing shall  
37 proceed as set forth in subparagraph (B) of paragraph (2) of  
38 subdivision (a).

39 (4) ~~Any~~ A defendant who has been committed or has been on  
40 outpatient status for 18 months and is still hospitalized or on

1 outpatient status shall be returned to the committing court where  
2 a hearing shall be held pursuant to the procedures set forth in  
3 Section 1369. The court shall transmit a copy of its order to the  
4 community program director or a designee.

5 (5) If it is determined by the court that no treatment for the  
6 defendant's mental impairment is being conducted, the defendant  
7 shall be returned to the committing court. The court shall transmit  
8 a copy of its order to the community program director or a  
9 designee.

10 (6) At each review by the court specified in this subdivision,  
11 the court shall determine if the security level of housing and  
12 treatment is appropriate and may make an order in accordance  
13 with its determination. If the court determines that the defendant  
14 shall continue to be treated in the state hospital or on an outpatient  
15 basis, the court shall determine issues concerning administration  
16 of antipsychotic medication, as set forth in subparagraph (B) of  
17 paragraph (2) of subdivision (a).

18 (c) (1) At the end of three years from the date of commitment  
19 or a period of commitment equal to the maximum term of  
20 imprisonment provided by law for the most serious offense charged  
21 in the information, indictment, or misdemeanor complaint, or the  
22 maximum term of imprisonment provided by law for a violation  
23 of probation or mandatory supervision, whichever is shorter, but  
24 no later than 90 days prior to the expiration of the defendant's term  
25 of commitment, a defendant who has not recovered mental  
26 competence shall be returned to the committing court. The court  
27 shall notify the community program director or a designee of the  
28 return and of any resulting court orders.

29 (2) Whenever ~~any~~ a defendant is returned to the court pursuant  
30 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this  
31 subdivision and it appears to the court that the defendant is gravely  
32 disabled, as defined in subparagraph (B) of paragraph (1) of  
33 subdivision (h) of Section 5008 of the Welfare and Institutions  
34 Code, the court shall order the conservatorship investigator of the  
35 county of commitment of the defendant to initiate conservatorship  
36 proceedings for the defendant pursuant to Chapter 3 (commencing  
37 with Section 5350) of Part 1 of Division 5 of the Welfare and  
38 Institutions Code. ~~Any hearings~~ *Hearings* required in the  
39 conservatorship proceedings shall be held in the superior court in  
40 the county that ordered the commitment. The court shall transmit

1 a copy of the order directing initiation of conservatorship  
2 proceedings to the community program director or a designee, the  
3 sheriff and the district attorney of the county in which criminal  
4 charges are pending, and the defendant's counsel of record. The  
5 court shall notify the community program director or a designee,  
6 the sheriff and district attorney of the county in which criminal  
7 charges are pending, and the defendant's counsel of record of the  
8 outcome of the conservatorship proceedings.

9 (3) If a change in placement is proposed for a defendant who  
10 is committed pursuant to subparagraph (B) of paragraph (1) of  
11 subdivision (h) of Section 5008 of the Welfare and Institutions  
12 Code, the court shall provide notice and an opportunity to be heard  
13 with respect to the proposed placement of the defendant to the  
14 sheriff and the district attorney of the county in which the criminal  
15 charges or revocation proceedings are pending.

16 (4) If the defendant is confined in a treatment facility, a copy  
17 of any report to the committing court regarding the defendant's  
18 progress toward recovery of mental competence shall be provided  
19 by the committing court to the prosecutor and to the defense  
20 counsel.

21 (d) With the exception of proceedings alleging a violation of  
22 mandatory supervision, the criminal action remains subject to  
23 dismissal pursuant to Section 1385. If the criminal action is  
24 dismissed, the court shall transmit a copy of the order of dismissal  
25 to the community program director or a designee. In a proceeding  
26 alleging a violation of mandatory supervision, if the person is not  
27 placed under a conservatorship as described in paragraph (2) of  
28 subdivision (c), or if a conservatorship is terminated, the court  
29 shall reinstate mandatory supervision and may modify the terms  
30 and conditions of supervision to include appropriate mental health  
31 treatment or refer the matter to a local mental health court, reentry  
32 court, or other collaborative justice court available for improving  
33 the mental health of the defendant.

34 (e) If the criminal action against the defendant is dismissed, the  
35 defendant shall be released from ~~any~~ commitment ordered under  
36 this section, but without prejudice to the initiation of any  
37 proceedings that may be appropriate under the  
38 Lanterman-Petris-Short Act (Part 1 (commencing with Section  
39 5000) of Division 5 of the Welfare and Institutions Code).



1 (f) As used in this chapter, “community program director” means  
2 the person, agency, or entity designated by the State Department  
3 of State Hospitals pursuant to Section 1605 of this code and Section  
4 4360 of the Welfare and Institutions Code.

5 (g) For the purpose of this section, “secure treatment facility”  
6 shall not include, except for state mental hospitals, state  
7 developmental centers, and correctional treatment facilities, any  
8 facility licensed pursuant to Chapter 2 (commencing with Section  
9 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter  
10 3.2 (commencing with Section 1569) of, Division 2 of the Health  
11 and Safety Code, or any community board and care facility.

12 (h) Nothing in this section shall preclude a defendant from filing  
13 a petition for habeas corpus to challenge the continuing validity  
14 of an order authorizing a treatment facility or outpatient program  
15 to involuntarily administer antipsychotic medication to a person  
16 being treated as incompetent to stand trial.